

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALLSTAFF, INC.,)
) No. 641, 2010
Plaintiff Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware in
v.) and for Kent County
)
WILMINGTON TRUST) C.A. No. K10C-02-014
COMPANY,)
)
Defendant Below,)
Appellee.)

Submitted: February 2, 2011

Decided: March 7, 2011

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 7th day of March 2011, it appears to the Court that:

(1) Allstaff, Inc., appeals from a Superior Court order granting Wilmington Trust Company's motion to dismiss. On appeal, Allstaff claims that the trial court erroneously concluded that the statute of limitations barred Allstaff's state law claims against WTC. Because the District Court's decision in Allstaff's federal action was a judgment on the merits, the Savings Statute does not apply to toll the three-year statute of limitations for Allstaff's state law claims, therefore, we **AFFIRM** the judgment of the Superior Court.

(2) Allstaff was a Delaware corporation that supplied temporary workers to construction companies. According to Allstaff's president and sole shareholder, William Boyd, the company had been a successful and profitable business with over 100 clients in 2004. Allstaff maintained a business checking account with the Newport branch of WTC. William asserts that he was the only authorized signatory on the account.

(3) William alleges that Allstaff was the victim of a massive embezzlement scheme in which WTC knowingly participated and facilitated. John Boyd, Jr. (Jack), Allstaff's administrative assistant and William's brother, was allegedly intercepting checks that had been made out to Allstaff. William claims Jack deposited the embezzled checks into his own business account at WTC, Jack Boyd's Action Employment, Inc., even though the checks had not been endorsed by William or by anyone else. William contends that after he discovered this scheme in November 2005, he went to the WTC Newport branch and spoke with Dianne Francetti about the problem. Despite that meeting, William asserts, WTC did nothing to stop Jack from depositing Allstaff's checks into Action Employment's WTC account. As a result, Allstaff went out of business a few months later.

(4) William diligently searched for counsel to bring suit against WTC, but was unable to find representation.¹ On May 2, 2007, he filed suit against WTC *pro se* in the United States District Court for the District of Delaware (the federal action). According to William's federal complaint, he was the president and sole stockholder of B & R Employment, Inc., a temporary employment agency. In January 1997, William sold his entire stake in B & R to Jack, and was no longer involved or employed by B & R. That sale included a list of all of B & R's clients. William assumed that B & R was no longer operating as a business, because when Jack purchased B & R from William, Jack also owned Action Employment and was planning on selling both companies. In 2005, Jack sold B & R for \$4 million dollars. William did not receive any of those proceeds because he was no longer an owner. The alleged embezzlement scheme occurred during the time Jack was planning to sell B & R and when William owned Allstaff.²

(5) Although his Federal Action complaint asserted that WTC had discriminated against him, the District Court later determined that William really filed an antitrust claim against WTC based upon bank fraud, embezzlement, and

¹ William claims that he had contacted over 100 attorneys and had met with at least twenty of them, but still could not find representation. Op. Br. at. 7.

² See *Boyd v. Wilm. Trust Co.*, 630 F.Supp.2d 379, 380-82 (D. Del. 2009).

extortion.³ WTC moved for summary judgment on the grounds that William lacked standing to seek relief and that his complaint failed to support factually antitrust violations.⁴

(6) The District Court granted summary judgment in favor of WTC on three grounds. First, the Court concluded that there were no facts in the complaint to support a discrimination claim against WTC. Second, the Court found that William lacked standing to bring an action for bank fraud, embezzlement, extortion, and antitrust violations under 18 U.S.C. §§ 2315, 1951, and 642-654, because none of those criminal statutes created a private right of action.⁵ Third, the Court held that William lacked standing to bring the action individually because the alleged injuries occurred to B & R and Allstaff, not William himself. Because William was not a lawyer, he could not represent either B & R or Allstaff,⁶ and William had no personal standing or third-party standing to raise claims on behalf of B & R and Allstaff.⁷

³ *Id.* at 382-83.

⁴ *Id.* at 383.

⁵ *Id.* at 384-85.

⁶ *Id.* at 385.

⁷ *Id.* at 386.

(7) William moved for reconsideration. That motion was denied, and William did not appeal the District Court's decision.⁸ Instead, he secured counsel who filed the present action on behalf of Allstaff in the Delaware Superior Court on February 9, 2010. His Superior Court complaint included claims for: conversion; aiding and abetting conversion, embezzlement, breach of employee duty; negligence; and RICO violations. WTC moved to dismiss on the grounds that: (a) the Superior Court lacked subject matter jurisdiction over Allstaff's RICO claims; (b) the complaint failed to state a claim upon which relief could be granted; and (c) Allstaff failed to join a necessary party. WTC also asserted that the statute of limitations and collateral estoppel barred Allstaff's claims. In response, Allstaff argued that the Delaware Savings Statute, 10 *Del. C.* § 8188(a) tolled the claims.

(8) On September 7, 2010, the Superior Court dismissed the complaint on the ground that the statute of limitations barred all of Allstaff's claims.⁹ The trial court concluded that for Allstaff's state law claims (Counts I-III), the applicable statute of limitations was three years, and that window had expired in November 2008.¹⁰ The Court also held that Section 8188(a) did not apply, because the

⁸ Ans. Br. at. 1.

⁹ *Allstaff, Inc. v. Wilm. Trust Co.*, 2010 WL 4056122 (Del. Super. Ct., Sept. 7, 2010).

¹⁰ 10 *Del. C.* § 8106 (defining three-year statute of limitations).

District Court's summary judgment decision was a decision on the merits that dismissed William's Federal Action with prejudice.¹¹ Allstaff's RICO claim was similarly barred, because the applicable four-year statute of limitations had expired in November 2009, three months before Allstaff filed its complaint.¹² This appeal followed.

(9) On appeal, Allstaff claims that the Superior Court erroneously refused to toll the statute of limitations on its state law claims (Counts I-III) under the Delaware Savings Statute, 10 *Del. C.* § 8188(a).¹³ Specifically, Allstaff argues that the District Court's order granting summary judgment in favor of WTC was not a decision "on the merits." Rather, that order was "a matter of form," because the District Court held that William could not bring a case on behalf of Allstaff as an individual, and Allstaff would need to be represented by counsel. Because that holding disposed of the Federal Action, the remainder of the District Court's order was dictum. Section 8188(a), therefore, should have applied to toll the three-year statute of limitations and give Allstaff an extra year to file its current action.

¹¹ *Allstaff*, 2010 WL 4056122 at *3.

¹² *Id.* at *5.

¹³ Allstaff does not challenge the Superior Court's conclusions that his RICO claim (Count IV) is barred by the applicable four-year statute of limitations.

(10) We review a trial court’s decision on a motion to dismiss *de novo*.¹⁴ To the extent that the issue on appeal raises a question of statutory interpretation, that also warrants *de novo* review.¹⁵

(11) The Savings Statute, which is codified at 10 Del. C. § 8118(a), provides six exceptions to the applicable statute of limitations in circumstances where a plaintiff has timely filed a lawsuit, but has been procedurally barred from obtaining a resolution on the merits.¹⁶ We have held that for the statute to apply and give a plaintiff an extra year in which to file his action, the previous judgment must not have been “upon the merits of the cause of action.”¹⁷ Relevant to this case is the fourth exception, which states that:

If in any action duly commenced within the time limited therefore in this chapter . . . if the writ is abated, or the action otherwise avoided or defeated by the death of any party thereto, or *for any matter of form* . . . a new action may be commenced, for the same cause of action, at any time within one year after the abatement or other determination of the original action, or after the reversal of the judgment therein.¹⁸

¹⁴ *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 557 (Del. 2009).

¹⁵ *Id.* at 558.

¹⁶ *Reid v. Spazio*, 970 A.2d 176, 180 (Del. 2002).

¹⁷ *Gosnell v. Whetsel*, 7 Storey 241, 245 (Del. 1964); *see also O’Donnell v. Nixon Unif. Serv. Inc.*, 2003 WL 21203291, at *3 (Del. Super. Ct. May 20, 2003) (noting that the Savings Statute does not apply when there is a final judgment on the merits).

¹⁸ 10 Del. C. § 8118(a) (emphasis added).

(12) Allstaff cannot fairly characterize the District Court’s order as a “matter of form” and not a “decision on the merits.” A judgment is a “matter of form” when it is decided on procedural technicalities,¹⁹ for example, where an action is dismissed because service of process on a defendant was insufficient.²⁰ But, a summary judgment decision generally operates as a final judgment on the merits.²¹ Here the District Court based its decision not only on standing grounds, but also on the basis that William’s discrimination, embezzlement and theft, and antitrust claims were wholly without merit and failed as a matter of law.²² That decision, therefore, considered the substance of William’s complaint and operated as a judgment on the merits.

¹⁹ See *Empire Fin. Servs., Inc. v. Bank of New York*, 2001 WL 755936, at *1 n.3 (Del. Super. Ct., Jan. 12, 2001) (citing cases where Delaware courts have applied the saving statute where the prior decision was decided upon “procedural technicalities”).

²⁰ See, e.g., *Gaspero v. Douglas*, 1981 WL 10228, at *3 (Del. Super. Ct. Nov. 6, 1981) (holding that the Savings Statute applies “where a prior timely action has been dismissed because of a failure to perfect service of process within the period of limitations.”).

²¹ *Allied Artists Pictures, Corp. v. Baron*, 413 A.2d 876, 878 (Del. 1980) (holding that a decision on a motion for summary judgment is a final decision on the merits); see also *Hubicki v. ACT Indus., Inc.*, 484 F.2d 519, 524 (3rd Cir. 1973) (noting that “the law is clear that summary judgment is a final judgment on the merits. . .”).

²² *Boyd v. Wilm. Trust Co.*, 630 F.Supp.2d 379, 386 (D. Del. 2009) (“As discussed, the claims fail as a matter of law.”); see also *id.* at 386 n.24 (noting that “as a matter of law, Plaintiff cannot prove Defendant violated the [Sherman] Act.”); *id.* at 383 (“Nothing before the Court indicates that Defendant discriminated against Plaintiff . . .”); *id.* at 384 (“To the extent Plaintiff asserts civil claims under any of the forgoing statutes [for embezzlement, theft, misuse of public funds, racketeering, and stolen property], they fail as a matter of law.”).

(13) Because the District Court’s decision was a judgment on the merits, and not a “matter of form,” the Savings Statute does not apply to toll the three-year statute of limitations for Allstaff’s state law claims. Therefore, the Superior Court did not erroneously dismiss Allstaff’s complaint on that basis.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice